

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-393

June 23, 2004

CENTRAL MAINE POWER COMPANY
Request for Exemption from the Town of
Kittery's Zoning Regulations

ORDER APPROVING
STIPULATION

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

We approve a Stipulation between Central Maine Power Company (CMP) and the Town of Kittery. We also grant CMP a partial exemption, pursuant to 30-A M.R.S.A. § 4352(4), from the Town of Kittery's Land Use and Development Code by allowing CMP to energize the newly-constructed transmission line that runs from Kittery to York when the line is operational and before the Town's Code Enforcement Officer (CEO) issues a Certificate of Occupancy.

II. BACKGROUND

The Southern York County System Reinforcement Project (the York Project) involves constructing new substations in Kittery and York, other substations as well as transmission line upgrades, and the new 34.5 kV transmission line from Kittery into York. The York Project was the subject of a 10-person complaint concerning the need and proper location of the proposed transmission project. The complaint case was resolved when the Commission approved a stipulation that found that the project was necessary for voltage support and reliability in the southern York County area. *Laurie Downs et al. v. Central Maine Power Company*, Docket No. 2002-665 (Aug. 14, 2003).

The Kittery portion of the new 34.5 kV transmission line already was the subject of a Commission proceeding, *Central Maine Power Company*, Docket No. 2003-704 (Dec. 19, 2003). Docket No. 2003-704 arose because transmission lines were not specifically authorized uses pursuant to the Kittery Land Use and Development Code (the Kittery zoning ordinance) in areas the line would be built, and therefore the line required a special exception from the Kittery Zoning Board of Appeals (ZBA or the Board). The ZBA denied CMP a special exception because the Board found that the higher poles needed for the new line would adversely affect property values of the properties that abut the line, and that the Kittery zoning ordinance prohibited a special exception if property values were not maintained.

CMP asked that the Commission exempt the utility pursuant to 30-A M.R.S.A. § 4352(4), from the requirement in the Kittery zoning ordinance that it obtain a special exception for the transmission line. We decided to exempt CMP from the provision of the Kittery zoning ordinance that requires CMP to obtain a special exception, finding

CMP's request "to be precisely the kind of local zoning decision that the legislature had in mind when it granted the Commission its authority under section 4352(4)." *Id.* at 9. We pointed out that the new transmission line had been the subject of an extensive, public proceeding at the Commission. That proceeding was resolved by a stipulation joined by local citizens, the towns where the new facilities would be located (including Kittery), the Public Advocate, and CMP. The stipulation served to balance local land use concerns with the broader electricity needs and to determine a reasonable route for the transmission line. In Kittery, most of the new line would be located in corridors where existing transmission or distribution lines already were present.

CMP also needed approval from the Kittery Planning Board under the Kittery zoning ordinance. On Nov. 20, 2003, the Planning Board approved the CMP project, subject to several conditions, including restoration work in accordance with planting and landscaping plans.

On June 11, 2004, CMP petitioned the Commission for another exemption from the Kittery zoning ordinance, so that CMP may energize the new Kittery-York transmission line when it is operational on or about June 25, 2004. CMP states that Kittery officials believe that the utility requires a Certificate of Occupancy from Kittery's Code Enforcement Officer (CEO) before CMP energizes the new transmission line. CMP also states that the CEO will not issue the Certificate of Occupancy until CMP meets all the conditions of the Planning Board approval. CMP further alleges that it is not possible for it to meet all the Planning Board conditions within the next week or so. For instance, CMP states that plantings that are required have always been scheduled to occur in the fall, the optimal season for doing so. CMP states, however, that it intends to and will comply with all conditions, but that in the meantime, the line needs to be energized to obtain the voltage and reliability benefits.

CMP states the line will be ready to energize by Friday, June 25, 2004. CMP asserts that it has worked diligently to have the line in operation before the July 4th weekend, because of the expected high loads in southern York County on the holiday weekend. Accordingly, CMP asks for an exemption from the requirement of a Certificate of Occupancy.

On June 17, 2004, CMP filed a "Stipulation and Agreement by Parties for Docket Entry by Maine Public Utilities Commission" (Stipulation). The Stipulation is signed by CMP and the Town of Kittery. The Stipulation provides that:

The Town does not oppose the granting by the PUC of a partial exemption from the [Kittery zoning ordinance], thereby allowing CMP to put its full Project System to use, specifically, to energize the full transmission loop through the Kittery substation where it is operational on or about June 25, 2004 and prior to the Town's issuance of a Certificate of Occupancy.

CMP and the Town also agree that CMP requires a Certificate of Occupancy upon satisfactory completion of the York Project, including satisfaction of the Planning Board conditions. CMP agrees that it will complete all work by November 30, 2004 so that the CEO may inspect CMP's work, and that CMP must receive a Certificate of Occupancy from the CEO by that date. The Town and CMP also agree that the Commission "shall retain continuing jurisdiction over CMP's ...Petition and the Town" and that either party may "petition the PUC for appropriate sanctions and/or relief from the PUC for any failure of CMP or the Town to timely comply with the terms of the within Stipulation."¹

On June 15, 2004, Laurie Downs, the lead complainant in the 10-person complaint proceeding, filed a letter in support of CMP's Petition. On June 15, 2004, the Board of Selectmen of the Town of York, filed a statement that expressed strong support for allowing CMP to energize the Kittery/York transmission line on June 25, 2004.

III. DECISION

CMP's exemption request concerns a technical requirement of the Kittery ordinance that apparently restricts CMP from "occupying" or using the line until all aspects of the Project are complete. In the context of a request to exempt from a narrow requirement of the town ordinance, for a transmission project that has already been the subject of a fully litigated, and much more significant, exemption from the Kittery zoning ordinance, the utility and the town represent the entire spectrum of interests in the matter. Therefore, we conclude that there can be no appearance or reality of disenfranchisement of any other interests in the matter.

Likewise, the process for reaching the Stipulation appears to have been a fair one, as both necessary parties join it. We do note the counsel for the OPA assisted in the negotiations. The OPA often facilitates the process for parties that are less familiar with the utility regulatory process.

Lastly, we find that the Stipulation is reasonable, not contrary to any legislative mandate, and in the public interest. The Stipulation permits the Commission to exempt CMP from the Certificate of Occupancy requirement on a temporary basis so that CMP can use the newly-constructed transmission line. We have already determined that CMP needs the new line to meet its obligation to provide safe, reliable utility service. The Stipulation also provides that CMP's obligations in regards to the Project go beyond energizing the line, and obligates CMP to complete all the other tasks by November 30, 2004. It is reasonable for CMP to promise to satisfy the other Planning Board conditions and to do so by a date certain, and for the Town to obtain another means to enforce such a promise by obtaining a Commission Order approving the Stipulation.

¹ We interpret paragraph D of the Stipulation to intend that either CMP or the Town may petition the Commission. Only CMP is listed as allowed to petition the PUC, but it makes no sense that CMP can petition because of a failure of CMP to comply with the Stipulation.

Accordingly, we

O R D E R

1. That the Stipulation filed on June 17, 2004 and attached to this Order is approved; and
2. That Central Maine Power Company is granted a temporary exemption from the Kittery Land Use and Development Code as described in this Order.

Dated at Augusta, Maine, this 23rd day of June, 2004.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Diamond
 Reishus

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.